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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 110816505-2184-03]

RIN 0648-BB39

Fisheries of the Northeastern United States; Northeast Multispecies Fishery Management Plan; Secretarial Amendment

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: This final rule implements a Secretarial Amendment to the Northeast Multispecies Fishery Management Plan to establish a mechanism for specifying annual catch limits and accountability measures for the small-mesh multispecies fishery beginning in fishing year 2012. This amendment is necessary because the New England Fishery Management Council has been delayed in implementing a mechanism to specify annual catch limits and accountability measures for the silver hake, red hake, and offshore hake stocks that are managed as a sub-set of the Northeast Multispecies Fishery Management Plan to meet the 2011 deadline in the Magnuson-Stevens Fishery Conservation and Management Act.

DATES: This rule is effective on [insert date 30 days after date of publication in the FEDERAL REGISTER].

ADDRESSES: An environmental assessment (EA) was prepared for the Secretarial Amendment that describes the proposed action and other considered alternatives, and provides an analysis of the impacts of the proposed measures and alternatives. Copies of the Secretarial Amendment, including the EA and the Initial Regulatory Flexibility Analysis (IRFA), are available on request from Daniel Morris, Acting Regional Administrator, Northeast Regional Office, 55 Great Republic Drive, Gloucester, MA 01930. These documents are also available online at <http://www.nero.noaa.gov>.

FOR FURTHER INFORMATION CONTACT: Moira Kelly, Fishery Policy Analyst, (978) 281-9218.

SUPPLEMENTARY INFORMATION:

Background

The small-mesh multispecies complex is composed of five stocks of three species of hakes (northern silver hake, southern silver hake, northern red hake, southern red hake, and offshore hake), and the fishery is managed through a series of exemptions from the other provisions of the Northeast Multispecies Fishery Management Plan (FMP). Amendment 19 to the FMP was initiated by the New England Fishery Management Council (Council) in 2009 to establish a mechanism for specifying annual catch limits (ACLs) and accountability measures (AMs) for the small-mesh multispecies fishery, as required by the 2007 reauthorization of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), 16 U.S.C. 1801 *et seq.* The Council postponed development of the amendment in order to include the results of an updated stock assessment in November 2010. Developing the amendment has been further delayed by the Council due to other pressing actions, and Amendment 19 is not scheduled to be implemented until October 2012, well past the Magnuson-Stevens Act's

deadline of 2011 for implementing ACLs and AMs. NMFS has determined that it is necessary and appropriate, under section 304(c)(1)(A) of the Magnuson-Stevens Act, to develop a Secretarial Amendment in order to bring the small-mesh multispecies fishery into compliance with the Magnuson-Stevens Act requirements concerning ACLs and AMs. A description of the steps NMFS took to comply with the Magnuson-Stevens Act requirements for implementing a Secretarial Amendment was included in the proposed rule published on December 23, 2011 (76 FR 80318) and is not repeated here.

Final Measures

Mechanism for Specifying Catch Limits and the Specification Process

The Magnuson-Stevens Act requires that each FMP establish “a mechanism for specifying annual catch limits . . . at such a level that overfishing does not occur in the fishery, including measures to ensure accountability.” In order to do establish ACLs and AMs for the small-mesh multispecies fishery, the first step is to estimate the overfishing limit (OFL) for each stock. The OFL is the amount of catch above which overfishing is deemed to be occurring; that is, it is a status determination criterion for overfishing. It is an annual limit derived as the product of current exploitable biomass and the current rate of fishing, after taking into account the variance of each factor. To calculate the OFL for each stock, the Council’s Small-Mesh Multispecies Plan Development Team (PDT) derived a distribution of OFLs for each species; each OFL is equal to the 50th percentile of that distribution. The 3-year moving average biomass for silver hake is estimated using the fall trawl survey and the 3-year moving average biomass estimate for red hake is estimated using the spring trawl survey, based on guidance from the Council’s Scientific and Statistical Committee (SSC) and the November 2010 stock assessment. No reliable estimates for offshore hake are available.

For fishing years 2012-2014, the OFLs are as follows:

Table 1 Fishing Years 2012-2014 OFLs

	OFL (mt)
Northern Red Hake	314 mt
Northern Silver Hake	24,840 mt
Southern Red Hake	3,448 mt
Southern Silver Hake	62,301 mt

The second step in establishing ACLs is to account for uncertainty in the OFL estimate by estimating the acceptable biological catch (ABC). ABC is the level of catch that accounts for scientific uncertainty in the estimate of the OFL and any other scientific uncertainty. Based on guidance from the SSC, the ABCs are set equal to the 40th percentile of the OFL distribution for both red hake stocks, and the 25th percentile for both silver hake stocks (Table 2). In order to account for offshore hake, which are caught incidentally in the southern silver hake fishery and are marketed together as “whiting,” the southern silver hake ABC is increased by 4 percent.

Table 2 Fishing Years 2012-2014 ABCs

	OFL	Percentile of OFL Distribution	Percent of OFL	ABC
Northern Red Hake	314 mt	40 th	89.17%	280 mt
Northern Silver Hake	24,840 mt	25 th	53.05%	13,177 mt
Southern Red Hake	3,448 mt	40 th	94.52%	3,259 mt
Southern Whiting*	62,301 mt	25 th	54.48%	33,940 mt

* Southern Whiting ABC = Silver Hake 25th percentile of OFL (32,635 mt) + 4% (1,305 mt)

The final step in setting the ACLs, after estimating OFL and ABC, is to take into account any uncertainty in the ability of managers to effectively implement the recommended catch levels. The Council has recommended that ACLs for the small-mesh multispecies fishery be set equal to 95 percent of the corresponding ABC to account for management uncertainty. The mechanism to establish ACLs for the small-mesh multispecies fishery results in four ABCs

(northern red hake, northern silver hake, southern red hake, and southern whiting), set below their respective OFLs to account for scientific uncertainty, and four corresponding ACLs, set below ABC to account for management uncertainty, where $ACL = 95 \text{ percent } ABC$ (Table 3.)

Table 3 Fishing Years 2012-2014 ABCs and ACLs for Small-Mesh Multispecies

	ABC	ACL (95% of ABC)
Northern Red Hake	280 mt	266 mt
Northern Silver Hake	13,177 mt	12,518 mt
Southern Red Hake	3,259 mt	3,096 mt
Southern Whiting	33,940 mt*	32,243 mt

* Southern Whiting ABC = Silver Hake 25th percentile of OFL (32,635 mt) + 4% (1,305 mt)

This final rule implements total allowable landings (TAL) on a stock area basis, with southern silver and offshore hake combined. This results in four TALs (Table 4) that relate directly to the ACLs recommended by the SSC and the Council. Discards and estimated state landings are deducted from the ACLs, and stock area TALs are used as the management limit. At its September 2011 meeting, the Council recommended a 3-percent allowance for state landings. The Council also recommended using a discard estimate based on the average discards from 2008–2010 for all stocks.

Table 4 Fishing Year 2012 -2014 ACLs and TALs

	Northern Red Hake	Northern Silver Hake	Southern Red Hake	Southern Whiting
ACL	266 mt	12,518 mt	3,096 mt	32,295 mt
Discard % (2008-2010)	65%	26%	56%	13%
Discards (mt)	173 mt	3,255 mt	1,718 mt	4,198 mt
State Landings (3% of ACL –Discards)	2.8 mt	278 mt	42 mt	842 mt
Federal TAL (mt)	90.3 mt	8,985 mt	1,336 mt	27,255 mt
Federal TAL (lb)	199,077.4 lb	19,809,243 lb	2,945,376 lb	60,086,990 lb

After the publication of the proposed rule, the Council's PDT corrected a calculation error in the information provided to the Whiting Oversight Committee, upon which NMFS based the measures in the proposed rule. The PDT inadvertently used the 2007-2009 discard rates instead of the 2008-2010 discard rates as was intended by the Council. Correcting this error

results in a slight decrease in the TALs for both northern silver hake and southern whiting (southern silver hake plus offshore hake), a slight increase in the TAL for southern red hake, and a relatively significant decrease in the TAL for northern red hake. The northern red hake TAL set by this rule is the only TAL that is close to or below recent landings levels: Based on the updated information, the discard rate for northern red hake changed from 58 percent to 65 percent, which reduced the northern red hake TAL from the proposed 108 mt to 90.3 mt. The Whiting Oversight Committee and the Council did not object to correcting the data for Amendment 19, and do not objecting to doing the same in the Secretarial Amendment.

Specifications Process

Specifications will be set on a 3-year cycle, starting with the first year of implementation of the Secretarial Amendment. This process will be used to update the OFLs, ABCs, ACLs, and TALs based on the most recent available information using the calculations described above. Data expected to be used in the specifications setting process include, but are not limited to, new survey biomass indices, reported landings, estimated discards, and estimates of state-waters landings.

The Council, the PDT, and the Whiting Oversight Committee will monitor the status of the small-mesh multispecies fishery and resource. The Small-Mesh Multispecies PDT will meet to review the status of the stocks and the fishery. Based on this review, the PDT will report to the Council any changes or new information about the small-mesh multispecies stocks and/or fishery, and the PDT should recommend whether the specifications for the upcoming year(s) need to be modified. If necessary, the PDT will provide advice and recommendations to the Whiting Oversight Committee and the Council regarding the need to adjust measures for the small-mesh multispecies fishery to better achieve the FMP's objectives.

The PDT's recommendations will include the following information: OFL and ABC estimates for the next 3 fishing years, based on the control rules; ACLs that are set equal to 95 percent of the corresponding ABC; TALs that are calculated using an estimate of discards based on the most recent 3-year moving average for which data are available and an appropriate estimate of state-waters landings; an evaluation of catches compared to the ABCs in recent years; and any other measures that the PDT determines may be necessary to successfully implement the ACL framework, including, but not limited to, adjustments to the management uncertainty buffer between ABC and ACL.

The PDT will provide these recommendations to the SSC for review. The SSC will either approve the PDT's recommendations or provide alternative recommendations to the Council. The Council will then consider the SSC's and PDT's recommendations and make a decision on the specifications for the next 3 fishing years. The Council must establish ACLs that are equal to or lower than the SSC's recommended ABCs. Once the Council has approved ACLs, they will be submitted to NMFS for approval and implementation. After receiving the Council's ACLs, NMFS will review the recommendations and implement the ACLs in a manner consistent with the Administrative Procedure Act, if it is determined that the ACLs are consistent with applicable law. If the ACLs are determined to be inconsistent with applicable law, NMFS may publish alternative specifications that do not exceed the SSC's recommendations and are consistent with applicable law. If new ACLs are not implemented for the start of the new specifications cycle, the old ACLs will remain in effect until they are replaced.

Accountability Measures

This final rule implements both a proactive (in-season) and a reactive (post-season) AM framework for the small-mesh multispecies fishery. NMFS intends for the two AMs to

complement each other and to work jointly to ensure that the catch limits are not exceeded, and, if they are, to mitigate the potential harm to the small-mesh multispecies stocks.

In-season AM: Incidental Possession Limit Trigger

This final rule implements an AM that will reduce the possession of a particular stock to an incidental level when a trigger limit for that stock's TAL is projected to be reached. Under this approach, even if the TAL is exceeded, the possession limit will remain at the incidental level until the end of the fishing year. Based on a review of recent data and recommendations from the Council, this final rule implements the following incidental limits and triggers (Table 5).

Table 5 Incidental Possession Limits and Triggers

	% of TAL	Incidental Limit	
Red Hake	90	400 lb	181.44 kg
Silver and Offshore Hake, Combined	90	1,000 lb	907.18 kg

Post-Season AM: Pound-for-Pound Payback of an ACL Overage

The post-season AM requires NMFS, through the Northeast Regional Administrator, to deduct from a subsequent year's ACL any overage of a stock's ACL in a given year. ACL overages that occur in one year would be deducted from the ACL in the second year after the overage occurred (i.e., year 3). The data that are necessary to determine if an ACL was exceeded is not available until sometime the following year. Implementing the AM in year 3 is appropriate for the small-mesh multispecies fishery because this fishery in the northern area is restricted by the groundfish regulations in area and season. An in-season adjustment (i.e., in year 2) to an ACL might result in some exemption areas opening, while others would not. This also allows vessel owners the opportunity to prepare for the reduction with ample time to adjust their business plans.

Council Actions

Since the publication of the proposed rule for the Secretarial Amendment, the Council has preliminarily selected preferred measures for the purpose of public hearings on a draft of Amendment 19. Most of the measures being implemented in the Secretarial Amendment were also the Council's preferred alternatives, with three exceptions. First, the Council likely will propose a post-season AM that would reduce the in-season possession limit trigger by the same percentage by which the ACL was exceeded, instead of the pound-for-pound payback of an ACL overage implemented by this final rule. For example, if an ACL is exceeded by 5 percent, the Council may propose in Amendment 19 that the trigger would be reduced to 85 percent for the next fishing year. Second, the Council may propose in Amendment 19 an in-season AM incidental possession limit for silver hake and offshore hake, combined, of 2,000 lb (907.18 kg), instead of the 1,000-lb (453.59 kg), combined, in-season possession limit trigger implemented by this final rule. The third measure that differs between the Council's preliminary draft of Amendment 19 and the Secretarial Amendment is for the southern stock area quota framework. This final rule establishes an annual, stock-wide quota for the southern stock area. The Council may propose in Amendment 19 an annual, stock-wide quota that would switch to a quarterly, stock-wide quota in a subsequent fishing year if two-thirds of a southern stock area quota is harvested in a year. None of these alternatives were analyzed in the Secretarial Amendment. The Council did not provide any comments on the Secretarial Amendment; therefore, no changes from the proposed rule have been made based on the Council's work on Amendment 19.

Comments and Responses

One comment was received from an individual expressing support for the Secretarial Amendment and increased management of the small-mesh multispecies fishery in general. A second comment simply stated that 'I'm not sure this is a good idea,' without further

explanation. For the reasons stated above, this rule is necessary and appropriate to bring the small-mesh multispecies fishery into compliance with the Magnuson-Stevens Act requirements concerning ACLs and AMs.

Changes from the Proposed Rule

As described above, we are implementing a change in the TAL calculations, based on updated information from the Council's PDT.

A technical correction to the regulations at 50 CFR 648.88, and the corresponding prohibition at § 648.14(k)(15)(ii)(C) is also being implemented through this rule. This change is necessary to remove the confusion regarding which species a vessel issued a "non-regulated" Northeast multispecies permit may land. Specifically, there may be confusion regarding ocean pout, which is not, by definition, a "regulated species," but is not one of the species that a vessel issued a "non-regulated" permit may land.

Classification

The Administrator, Northeast Region, NMFS, determined that the Secretarial Amendment to the Northeast Multispecies FMP is necessary for conservation and management of the small-mesh multispecies fishery and that it is consistent with the Magnuson-Stevens Act and other applicable laws.

This final rule has been determined to be not significant for purposes of Executive Order 12866.

Pursuant to section 604 of the Regulatory Flexibility Act (RFA), this final rule includes a FRFA in support of the Secretarial Amendment analyzing the rule's impact on small entities. This FRFA incorporates the IRFA, a summary of the significant issues raised by the public comments in response to the IRFA, NMFS' responses to those comments, relevant analyses in

the Amendment and its EA, and a summary of the analyses completed to support the action implemented through this rule. A copy of the analyses done in the Amendment and EA is available from the Northeast Regional Administrator (see ADDRESSES). A summary of the IRFA was published in the proposed rule for this action and is not repeated here. A description of why this action was considered, the objectives of, and the legal basis for this rule is contained in the preamble to the proposed rule and this final rule and is not repeated here.

A Summary of the Significant Issues Raised by the Public in Response to the IRFA, a Summary of the Agency's Assessment of Such Issues, and a Statement of Any Changes Made in the Proposed Rule as a Result of Such Comments

Two comments were received on the proposed rule and the amendment. However, neither addressed the IRFA or economic analysis contained in the Secretarial Amendment, and neither resulted in any changes to the rule.

Description and Estimate of Number of Small Entities to Which the Final Rule Will Apply

The Small Business Administration (SBA) considers commercial fishing entities (NAICS code 114111) to be small entities if they have no more than \$4 million in annual sales, while the size standard for charter/party operators (part of NAICS cod 487210) is \$7 million in sales. The participants in the commercial small-mesh multispecies fishery are those vessels issued limited or open access Northeast multispecies permits that land any of the small-mesh multispecies. Because any vessel at any time may be issued an open access Northeast multispecies permit, it is difficult to determine how many vessels or owners will participate in this fishery in a given year. Although some firms own more than one vessel, available data make it difficult to reliably identify ownership control over more than one vessel. For this analysis, the number of vessels landing at least 1 lb (0.45 kg) of any of the small-mesh multispecies is considered to be a

maximum estimate of the number of small business entities. The average number of permitted vessels landing at least 1 lb (0.45 kg) of silver hake or red hake from 2005-2010 was 562 vessels per year. Thus, all of the entities (fishing vessels) affected by this action are considered small entities under the SBA size standards for small fishing businesses (\$4.0 million in annual gross sales). Therefore, there are no disproportionate effects on small versus large entities.

Information on costs in the fishery is not readily available and individual vessel profitability cannot be determined directly; therefore, expected changes in gross revenues were used as a proxy for profitability. In general, the economic impacts from the measures implemented in the Secretarial Amendment are neutral. There may be slightly negative impacts if the in-season or post-season AMs are triggered. These measures would reduce the amount of fish available to the fleet, which in turn would reduce revenues. On the other hand, there are likely to be positive long-term impacts on the fishery, as these measures are intended to ensure that the sustainable harvesting of the small-mesh multispecies stocks. These effects would be evaluated at the time such measures, if necessary, are implemented.

Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

There are no compliance requirements associated with this final rule implementing the Secretarial Amendment.

This final rule does not duplicate, overlap, or conflict with other Federal rules.

Description of the Steps the Agency Has Taken to Minimize the Significant Economic Impact on Small Entities Consistent with the Stated Objectives of Applicable Statutes

The management measures implemented in the Secretarial Amendment were developed to improve the overall management of the small-mesh multispecies fishery by establishing ACLs and AMs aimed at preventing overfishing. None of the measures being implemented in the

Secretarial Amendment reduce fishing opportunities or flexibility. The TALs are well-above recent landings levels, except for northern red hake. These measures also promote efficiency within the fishery or reduce waste associated with regulatory discards by establishing incidental possession limits that take into account the existing behavior of the fleet and setting incidental possession limits at or above the current, market-driven incidental level.

Therefore, by implementing management measures that provide flexibility and efficiency and reduce waste, NMFS has taken the steps necessary to minimize the impacts of this action on small entities consistent with the stated objectives of applicable statutes.

Small Entity Compliance Guide

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that, for each rule or group of related rules for which an agency is required to prepare a FRFA, the agency shall publish one or more guides to assist small entities in complying with the rule, and shall designate such publications as “small entity compliance guides.” The agency shall explain the actions a small entity is required to take to comply with a rule or group of rules. As part of this rulemaking process, a letter to permit holders that also serves as small entity compliance guide (the guide) was prepared. Copies of this final rule are available from the Northeast Regional Office, and the guide, i.e., permit holder letter, will be sent to all holders of permits for the Northeast multispecies fishery. The guide and this final rule will be available upon request, and posted on the Northeast Regional Office’s website at www.nero.noaa.gov.

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Recordkeeping and reporting requirements.

Dated: March 27, 2012

Alan D. Risenhoover,

Acting Deputy Assistant Administrator

For Regulatory Programs,

National Marine Fisheries Service.

For the reasons stated in the preamble, 50 CFR part 648 is amended as follows:

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

1. The authority citation for part 648 continues to read as follows:

Authority: 16 U.S.C. 1801 et seq.

1. In § 648.14, paragraph (k)(15)(ii)(C) is revised to read as follows:

§ 648.14 Prohibitions.

* * * * *

(k) * * *

(15) * * *

(ii) * * *

(C) Open access NE multispecies (non-regulated species permit). It is unlawful for any owner or operator of a vessel issued a valid open access NE multispecies permit to possess or land any regulated species, as defined in § 648.2, or to violate any applicable provisions of

§ 648.88, unless otherwise specified in §§ 648.14, 648.86, or 648.88.

* * * * *

2. In § 648.80, paragraphs (a)(8)(iii) and (a)(16)(iii) are revised to read as follows:

§ 648.80 NE Multispecies regulated mesh areas and restrictions on gear and methods of fishing.

* * * * *

(a) * * *

(8) * * *

(iii) For exemptions allowing no incidental catch of regulated species, as defined under paragraph (a)(8)(i) of this section, the NEFMC may recommend to the Regional Administrator, through the framework procedure specified in § 648.90(c), additions or deletions to exemptions for fisheries, either existing or proposed, for which there may be insufficient data or information for the Regional Administrator to determine, without public comment, percentage catch of regulated species. For exemptions allowing incidental catch of regulated species, as defined under paragraph (a)(8)(ii) of this section, the NEFMC may recommend to the Regional Administrator, through the framework procedure specified in § 648.90(c), additions or deletions to exemptions for fisheries, either existing or proposed, for which there may be insufficient data or information for the Regional Administrator to determine, without public comment, the risk that this exemption would result in a targeted regulated species fishery, the extent of the fishery in terms of time and area, and the possibility of expansion in the fishery.

* * * * *

(16) * * *

(iii) Annual review. On an annual basis, the Groundfish PDT will review data from this fishery, including sea sampling data, to determine whether adjustments are necessary to ensure

that regulated species bycatch remains at a minimum. If the Groundfish PDT recommends adjustments to ensure that regulated species bycatch remains at a minimum, the Council may take action prior to the next fishing year through the framework adjustment process specified in § 648.90(c), and in accordance with the Administrative Procedure Act.

* * * * *

3. In § 648.86, paragraph (d)(4) is added to read as follows:

§ 648.86 NE Multispecies possession restrictions.

* * * * *

(d) * * *

(4) In-season adjustment of small-mesh multispecies possession limits. If the Regional Administrator projects that 90 percent of a stock area TAL, as defined in § 648.90(b)(3), has been landed, the Regional Administrator shall reduce the possession limit of that stock described in paragraphs (d)(4)(i) and (ii) of this section, for the remainder of the fishing year through notice consistent with the Administrative Procedure Act, unless such a reduction in the possession limit would be expected to prevent the TAL from being reached.

(i) Red hake. If a possession limit reduction is needed for a stock area, the incidental possession limit for red hake in that stock area will be 400 lb (181.44 kg) for the remainder of the fishing year.

(ii) Silver hake and offshore hake. If a possession limit reduction is needed for a stock area, the incidental possession limit for silver hake and offshore hake, combined, in that stock area will be 1,000 lb (453.59 kg) for the remainder of the fishing year.

* * * * *

4. In § 648.88, paragraph (d) is revised to read as follows:

§ 648.88 Multispecies open access permit restrictions.

* * * * *

(d) Non-regulated NE multispecies permit. A vessel issued a valid open access non-regulated NE multispecies permit may possess and land one Atlantic halibut and unlimited amounts of the other non-regulated NE multispecies, unless otherwise restricted by § 648.86. The vessel is subject to restrictions on gear, area, and time of fishing specified in § 648.80 and any other applicable provisions of this part.

5. In § 648.90, the introductory text is revised, and paragraphs (b) and (c)(1)(ii) are revised to read as follows:

§ 648.90 NE multispecies assessment, framework procedures and specifications, and flexible area action system.

For the NE multispecies framework specification process described in this section, the regulated species and ocean pout biennial review is considered a separate process from the small-mesh species annual review, as described in paragraphs (a)(2) and (b)(1), respectively, of this section. In addition, the process for specifying ABCs and associated ACLs for regulated species and ocean pout, as described in paragraph (a)(4) of this section, is considered a separate process from the small-mesh species ABC and ACL process described in paragraph (b)(2) of this section.

* * * * *

(b) Small-mesh multispecies -- (1) Three-year specifications process, annual review, and Stock Assessment and Fishery Evaluation. The Council will specify on at least a 3-year basis the OFL, ABC, ACLs, and TALs for each small-mesh multispecies stock in accordance with the following process.

(i) At least every 3 years, based on the annual review, described below in paragraph (b)(3) of this section, and/or the SAFE Report described in paragraph (b)(4) of this section, recommendations for ABC from the Scientific and Statistical Committee (SSC), and any other relevant information, the Small-Mesh Multispecies PDT will recommend to the Whiting Oversight Committee and Council specifications including the OFL, ABC, ACL and TAL for each small-mesh multispecies stock the following specifications for a period of at least 3 years. The Small-Mesh Multispecies PDT and the Council will follow the process in paragraph (b)(2) of this section for setting these specifications.

(ii) The Small-Mesh Multispecies PDT, after reviewing the available information on the status of the stock and the fishery, may recommend to the Council any measures necessary to assure that the specifications will not be exceeded, as well as changes to the appropriate specifications.

(iii) Taking into account the annual review and/or SAFE Report described in paragraph (b)(2) of this section, the advice of the SSC, and any other relevant information, the Small-Mesh Multispecies PDT may also recommend to the Whiting Oversight Committee and Council changes to stock status determination criteria and associated thresholds based on the best scientific information available, including information from peer-reviewed stock assessments of small-mesh multispecies. These adjustments may be included in the Council's specifications for the small-mesh multispecies fishery.

(iv) Council recommendation. (A) The Council will review the recommendations of the Small-Mesh Multispecies PDT, Whiting Oversight Committee, and SSC, any public comment received thereon, and any other relevant information, and make a recommendation to the

Regional Administrator on appropriate specifications and any measures necessary to assure that the specifications will not be exceeded.

(B) The Council's recommendation must include supporting documentation, as appropriate, concerning the environmental, economic, and social impacts of the recommendations. The Regional Administrator will consider the recommendations and publish a rule in the Federal Register proposing specifications and associated measures, consistent with the Administrative Procedure Act.

(C) The Regional Administrator may propose specifications different than those recommended by the Council. If the specifications published in the Federal Register differ from those recommended by the Council, the reasons for any differences must be clearly stated and the revised specifications must satisfy the criteria set forth in this section, the FMP, and other applicable laws.

(D) If the final specifications are not published in the Federal Register for the start of the fishing year, the previous year's specifications will remain in effect until superseded by the final rule implementing the current year's specifications, to ensure that there is no lapse in regulations while new specifications are completed.

(2) Process for specifying ABCs, ACLs and TALs. The Small-Mesh Multispecies PDT will calculate the OFL and ABC values for each small-mesh multispecies stock based on the control rules established in the FMP. These calculations will be reviewed by the SSC, guided by terms of reference developed by the Council. The ACLs and TALs will be calculated based on the SSC's approved ABCs, as specified in paragraphs (a)(2)(i)(A) through (C), and (a)(2)(ii)(A) through (C) of this section.

(i) Red hake--(A) ABCs. The Council's SSC will recommend an ABC to the Council for both the northern and southern stocks of red hake. The red hake ABCs are reduced from the OFLs based on an adjustment for scientific uncertainty as specified in the FMP; the ABCs must be less than or equal to the OFL.

(B) ACLs. The red hake ACLs are equal to 95 percent of the corresponding ABCs.

(C) TALs. The red hake TALs are equal to the ACLs minus a discard estimate based on the most recent 3 years of data. The red hake TALs are then reduced by 3 percent to account for red hake landings that occur in state waters.

(ii) Silver and Offshore Hake--(A) ABCs. The Council's SSC will recommend an ABC to the Council for both the northern and southern stocks of silver hake. The ABC for the southern stock of silver hake will be increased by 4 percent to account for catch of offshore hake. The combined silver hake and offshore hake ABC in the southern area will be the southern whiting ABC. The silver hake and whiting ABCs are reduced from the OFLs based on an adjustment for scientific uncertainty as specified in the FMP; the ABCs must be less than or equal to the OFLs.

(B) ACLs. The northern silver hake and southern whiting ACLs are equal to 95 percent of the ABCs.

(C) TALs. The northern silver hake and southern whiting TALs are equal to the northern silver hake and southern whiting ACLs minus a discard estimate based on the most recent 3 years of data. The northern silver hake and southern whiting TALs are then reduced by 3 percent to account for silver hake and offshore hake landings that occur in state waters.

(3) Annual Review. (i) The Small-Mesh Multispecies PDT will meet at least once annually to review the status of the stock and the fishery and the adequacy of the 3-year

specifications. Based on such review, the PDT will provide a report to the Council on any changes or new information about the small-mesh multispecies stocks and/or fishery, and it will recommend whether the specifications for the upcoming year(s), established pursuant to paragraph (b)(1) of this section, need to be modified. At a minimum, this review should include a review of at least the following data, if available: Commercial catch data; current estimates of fishing mortality and catch-per-unit-effort (CPUE); discards; stock status; recent estimates of recruitment; virtual population analysis results and other estimates of stock size; sea sampling, port sampling, and survey data or, if sea sampling data are unavailable, length frequency information from port sampling and/or surveys; impact of other fisheries on the mortality of small-mesh multispecies; and any other relevant information.

(ii) If new and/or additional information becomes available, the Small-Mesh Multispecies PDT will consider it during this annual review. Based on this review, the Small-Mesh Multispecies PDT will provide guidance to the Whiting Oversight Committee and the Council regarding the need to adjust measures for the small-mesh multispecies fishery to better achieve the FMP's objectives. After considering this guidance, the Council may submit to NMFS its recommendations for changes to management measures, as appropriate, through the specifications process described in this section, the process specified in paragraph (c) of this section, or through an amendment to the FMP.

(4) SAFE Report. (i) The Small-Mesh Multispecies PDT will prepare a SAFE Report at least every 3 years. Based on the SAFE Report, the Small-Mesh Multispecies PDT will develop and present to the Council recommended specifications as defined in paragraph (a) of this section for up to 3 fishing years. The SAFE Report will be the primary vehicle for the presentation of all updated biological and socio-economic information regarding the small-mesh multispecies

fishery. The SAFE Report will provide source data for any adjustments to the management measures that may be needed to continue to meet the goals and objectives of the FMP.

(ii) In any year in which a SAFE Report is not completed by the Small-Mesh Multispecies PDT, the annual review process described in paragraph (a) of this section will be used to recommend any necessary adjustments to specifications and/or management measures in the FMP.

(5) Accountability measures for the small-mesh multispecies fishery -- (i) In-season adjustment of possession limits. If the Regional Administrator projects that 90 percent of a stock area TAL, as defined in § 648.90(b)(3), has been landed, the Regional Administrator shall reduce the possession limit of that stock to the incidental level, as specified in § 648.86(d)(4), for the remainder of the fishing year through notice consistent with the Administrative Procedure Act, unless such a reduction in the possession limit would be expected to prevent the TAL from being reached.

(ii) Post-season adjustment for an overage. If NMFS determines that a small-mesh multispecies ACL was exceeded in a given fishing year, the exact amount of the landings overage will be deducted, as soon as is practicable, from a subsequent single fishing year's ACL for that stock, through notification consistent with the Administrative Procedure Act.

(c) * * *

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(ii) Adjustment process for whiting DAS. The Council may develop recommendations for a whiting DAS effort reduction program through the framework process outlined in paragraph (c) of this section only if these options are accompanied by a full set of public

hearings that span the area affected by the proposed measures in order to provide adequate opportunity for public comment.

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